

## EPFSF Briefing: The White Paper on Post-FSAP

### Introduction

The European Commission published in December 2005 its White Paper on Financial Services, which completes a two-year process of consultation and contemplation launched by the Commission to determine the priorities for action in the post-FSAP phase. The process included a dialogue with expert forum groups and the publication of a Green Paper, the feedback from which is reflected to a large extent in the current document. Accordingly, the Commission's actions over the next five years will be structured around five key priorities:

- to consolidate progress achieved and ensure an efficient implementation and application of existing rules;
- to apply the 'better regulation' principle to any future initiative;
- to improve convergence of supervision;
- to strengthen competition between financial service providers, particularly in retail banking, investment funds and insurance;
- to increase European influence on global financial markets.

All of which are supported by industry.

In deciding on the optimal policy mix for the period, the Commission has sought to identify clear parameters for objectives and options, introducing five generic policy options.<sup>1</sup> In certain areas (financial analysts, rating agencies) no further action is proposed at EU level, while "dynamic consolidation" is to be applied to supervisory convergence and elimination of barriers to cross-border consolidation. New initiatives, subject to impact assessment studies, would be envisaged for retail financial services, Solvency II, clearing and settlement of securities, and asset management. Dynamic consolidation is also the leitmotiv for the overall approach for the next five years.

### A Period of 'Dynamic Consolidation'

After the intense legislative activity under the FSAP, there seems to be a consensus that it is necessary to utilise the upcoming phase as a period of consolidation of what has been achieved. The Commission's strong focus on timely and proper implementation of the FSAP regulatory actions are an essential element of this broader goal.

Similarly the 'better regulation' approach outlined in the document has been universally endorsed by the stakeholders during previous consultations. In fact, the debate has long concerned not whether or not impact assessments are necessary, but rather what steps the Commission needs to take in order to ensure that they are conducted in a genuinely professional, and neutral way. To work in practice such an approach must be consistently high quality, transparent and honest. To retain their value there must be no question of impact assessments being used before or after the event to justify a predetermined course of action or inaction. Additionally, the Commission's approach to better regulation should include feedback on consultations which would include explaining why certain recommendations made by stakeholders are not taken into account in policy proposals, and justifications for those that are retained above others. This would increase the transparency, openness and effectiveness of the consultation process. The overall principles of better regulation should be applied widely across all Commission DG's so as to cover all policy areas connected to financial services.

The White Paper attempts to illuminate how the Commission staff have decided on the proposed policy choices. However, the real success of the new strategy will hinge on the practical set-up of

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<sup>1</sup> The options outlined for each potential policy area as well as the overall approach are: (1) Take no further action at EU level; (2) Repeal existing pieces of EC Legislation or proposals; (3) Ensure follow-up of past policy actions ('limited follow-up'); (4) Consolidate dynamically the framework set in place by the FSAP ('extensive follow-up'); (5) New Initiatives.

the impact assessments, such as the internal changes to be introduced by the Commission in work assessment and motivation and the structure and resources allocated. The first tests will be the regulatory impact assessments to be concluded for asset management and clearing and settlement. The Commission should also be prepared to remove measures from proposals on the table where it is demonstrated that they are inconsistent with other regulation, will not achieve their desired objective or will have an adverse impact on the EU financial services market. It is important that post-evaluation focuses not only on the cost of implementation, but considers behavioural changes and assesses the impact of innovation, enterprise and competition in European financial markets.

The post-evaluation of legislative initiatives and improving consistent implementation of EU legislation requires similar close attention. While the industry has indicated full support for these objectives, the practical steps that will be taken require careful further reflection. The evaluation process, for example, must consider how to ensure independence of ex-post evaluation from the legislative and implementation stages, or how the Commission plans to prevent gold-plating. Clearer statements of desired behavioural changes drafted in the Directive or Regulation would assist the evaluation process.

The White Paper also puts emphasis on the need for full efficiency of the Lamfalussy process and convergence in supervisory practices. Some could argue that the White Paper lacks some ambition with respect to the problems surrounding the fragmentation of banking supervision. Others might see benefit in the gradual approach outlined in the White Paper which aims to build on the existing framework through practical improvements in supervisory cooperation. Industry agrees with the need to increase the efficiency of the Lamfalussy process. There is however no unanimity of view about whether an evolutionary approach, as put forward by the Commission, or a more revolutionary approach should be adopted. The White Paper does, however, identify all the salient issues which need to be addressed.

The development of the established role of the consolidating supervisor in the Capital Requirement Directive will make an important contribution to avoiding unnecessary duplication and costs, whilst enhancing supervisory cooperation. The Commission's approach respects the role of national supervisory authorities whilst ensuring that a group based in the European Union need only submit an application (e.g. to adopt the Internal Ratings Based Approach for credit risk) to the consolidating supervisor. It fosters cooperation by encouraging supervisors to work in full consultation when determining applications.

The Capital Requirement Directive's obligation for supervisors to disclose information to enable a meaningful comparison of approaches adopted across the EU will further promote convergence of supervisory approaches by ensuring that supervisors have a common set of supervisory tools at their disposal. It would also be promoted by the introduction of adequate supervisory disclosure.

### **The Right Policy Mix?**

Of the specific policy areas addressed in the White Paper, the section on retail banking outlines a potentially ambitious objective - creating a true Single Market for retail banking services – but much remains to be done. Industry agrees with the Commission that bank accounts are an important entry point for consumers to financial services. That said, we would encourage the Commission to be rigorous in its analysis of the current barriers to integration and to take care not to damage existing successful domestic markets in a drive towards integration. The White Paper notes the continued legislative progress of the Consumer Credit Directive, a proposal which would be strengthened had it been subject to the new 'better regulation' principles and a full impact assessment.

The Commission does not yet express a preference for the method of harmonisation of consumer protection legislation ('targeted' full harmonisation, mutual recognition or minimum harmonisation) to achieve an EU integrated retail banking market (other than outlining the drawbacks concerning the 26<sup>th</sup> regime identified during the consultation for the Green Paper). While future consultations

are no doubt necessary, the Commission's future actions in this area are likely to be effective only if there is a clearer political will towards the integration of retail banking across the EU.

Another important obstacle is access to delivery channels and it is therefore encouraging that the White Paper puts emphasis on banking mobility and competition. Many financial services firms are already cooperating in the sectoral enquiries (payment cards, clearing & settlement and retail banking) launched by the Commission (DG Competition). This work will be taken forward through an expert group. It will be particularly important for DGs Internal Market and Competition to continue to work closely together to ensure there is no duplication of effort or policy conflict.

At a broader financial services level, the White Paper also recognises the strategic importance of boosting the efficiency of pan-European markets for long-term savings and the need to address the EU's 'huge pension deficit'. The financial services sector can continue to play a constructive role in dialogue with the Commission, and in providing creative solutions and products that will help meet these important policy objectives.

Finally, the emphasis on the need to improve the external dimension of EU financial services policy reflects a strong plea from the industry, which has argued that the dialogue on financial markets with the US should be deepened and extended systematically to other countries, for instance in Asia (especially China and India). In addition to engaging in dialogue with these other countries, the EU should always bear in mind when creating its own legislation that EU firms operate cross-border in this global market place and must not be put at a competitive disadvantage in it by their domestic legislation. As markets become more global, we need to ensure that Europe's capital market remains internationally competitive. Key tests of our competitiveness are our ability to attract third country issuers and investors and their interests should be safeguarded in the regulatory framework going forward.

### **Conclusion**

The Commission's overall policy objectives – underpinned by dynamic consolidation – and the specific new (confirmed or potential) actions for the coming five years are broadly in line with the conclusions of the two-year long consultation and dialogue with the stakeholders. The final shape of the programme depends on the outcome of the regulatory impact assessments and further study in several areas (asset management, clearing and settlement of securities, retail banking, Solvency II). In addition, the legislation already adopted is to benefit from closer scrutiny to prevent inconsistent implementation and to undergo ex-post evaluation to measure the effects for the EU citizens and industry. The publication of the White Paper can thus be seen as the first step in a long journey towards the completion of not only the regulatory and supervisory convergence needed for the Single Market but also the practical transformation of the way financial services legislation is adopted and implemented in Europe.

Briefing notes are prepared by the Financial Industry Committee to the European Parliamentary Financial Services Forum. For further information on the subjects raised in the briefs please contact the Chairman, Members or Secretariat of the Financial Industry Committee.

Chairman Financial Industry Members  
*Judith Hardt (Acting)*, FESE  
Rue du Lombard 41, B – 1000 Brussels  
Tel: 0032 2 551.01.80  
E-mail: [hardt@fese.org](mailto:hardt@fese.org)

Secretariat  
*Gabriela Diezhandino*, EPFSF Secretariat  
Av. de la Joyeuse Entrée, 1-5, B – 1040 Brussels  
Tel: 0032 2 504 80 40/ Fax: 0032 2 504 80 50  
E-mail: [secretariat@epfsf.org](mailto:secretariat@epfsf.org)

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